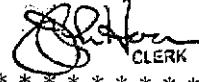


UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA

FILED
MAR 02 2006

SOUTHERN DIVISION


Clerk

MICHAEL ALAN HELLER,

*

CIV 06-4012

Petitioner,

-vs-

RICARDO MARTINEZ,
Custodian/Trustee,

*

ORDER DISMISSING
§ 2241 PETITION

Respondent.

*

Petitioner, Michael Alan Heller, an inmate at the Federal Prison Camp in Yankton, South Dakota, filed a petition for a writ of habeas corpus under 28 U.S.C. § 2241. Doc. 1. Petitioner then filed a Motion to Amend (Doc. 7) which set forth information that Petitioner had been sentenced in the District of Missouri, and that Petitioner had filed a motion under 28 U.S.C. § 2255 in that court. Petitioner further stated, “The District Court/Agency has not sent a ruling as of this date.”

The Eighth Circuit Court of Appeals has stated, “It is well settled a collateral challenge to a federal conviction or sentence must generally be raised in a motion to vacate filed in the sentencing court under § 2255 ... and not in a habeas petition filed in the court of incarceration ... under § 2241.” *Hill v. Morrison*, 349 F.3d 1089, 1091 (8th Cir. 2003); *see also, Abdullah v. Hedrick*, 392 F.3d 957 (8th Cir. 2004). The petitioner has the burden of demonstrating § 2255 relief in the sentencing court would be unavailable or ineffective. *Id.* Since there is no ruling from the sentencing court, Petitioner cannot meet that burden at this time. Accordingly

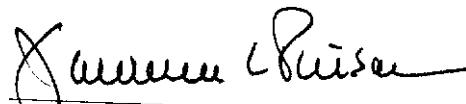
IT IS ORDERED:

- (1) that the Motion to Amend (Doc. 7), is granted;
- (2) that the petition for a writ of habeas corpus under 28 U.S.C. § 2241 (Doc. 1) is dismissed without prejudice;
- (3) that the motion for issuance of subpoena duces tecum (Doc. 3) is denied as moot; and

(4) that the motion for emergency hearing (Doc. 4) is denied as moot.

Dated this 2nd day of March, 2006.

BY THE COURT:



Lawrence L. Piersol
United States District Judge

ATTEST:

JOSEPH HAAS, CLERK

BY: Shelly Margulies
(SEAL) DEPUTY